

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAMIEN ALEXANDER PHILLIPS,

Plaintiff,

v.

HIGH DESERT STATE PRISON, *et al.*,

Defendants.

Case No. 2:24-cv-02224-RFB-EJY

ORDER

I. INTRODUCTION

Plaintiff Damien Phillips brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he allegedly suffered while incarcerated at High Desert State Prison. (ECF No. 1-1). On December 11, 2024, this Court ordered Phillips to either pay the full \$405 filing fee or file a complete application to proceed *in forma pauperis* by January 30, 2025. (ECF No. 3). That deadline expired without payment of the filing fee, a complete *in forma pauperis* application, or other response from Phillips.

II. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal

1 Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In
2 determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the
3 public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
4 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
5 their merits; and (5) the availability of less drastic alternatives. See In re Phenylpropanolamine
6 Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone, 833 F.2d at 130).

7 The first two factors, the public's interest in expeditiously resolving this litigation and the
8 Court's interest in managing its docket, weigh in favor of dismissal of Phillips's claims. The third
9 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
10 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
11 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
12 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
13 the other three factors favoring dismissal.

14 The fifth factor requires the Court to consider whether less drastic alternatives can be used
15 to correct the party's failure that brought about the Court's need to consider dismissal. See Yourish
16 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
17 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
18 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts “need not exhaust every
19 sanction short of dismissal before finally dismissing a case, but must explore possible and
20 meaningful alternatives.” Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986). Because
21 this Court cannot operate without collecting reasonable fees, and litigation cannot progress without
22 Phillips's compliance with the Court's orders, the only alternative is to enter a second order setting
23 another deadline. But repeating an ignored order often only delays the inevitable and further
24 squanders the Court's finite resources. The circumstances here do not indicate that this case will
25 be an exception. Setting another deadline is not a meaningful alternative given these
26 circumstances. So, the fifth factor favors dismissal.

Having thoroughly considered these dismissal factors, the Court finds that they weigh in favor of dismissal. **IT IS THEREFORE ORDERED** that this action is dismissed without prejudice based on Damien Phillips's failure to address the matter of the filing fee in compliance with this Court's December 11, 2024 Order (ECF No. 3). The Clerk of Court is kindly directed to enter judgment accordingly and close this case. No other documents may be filed in this now-closed case. If Damien Phillips wishes to pursue his claims, he must file a complaint in a new case and either pay the full filing fee or complete an *in forma pauperis* application.

IT IS FURTHER ORDERED that the Plaintiff may move to reopen this case and vacate the judgment by filing a motion for reconsideration of this Order. In this motion, the Plaintiff would need to explain that circumstances which led to him not being able to either pay the full filing fee or file a complete application to proceed *in forma pauperis*, as directed by the Court. If the Court finds there is good cause or a reasonable explanation for the failure, the Court will reopen the case and vacate the judgment.

DATED: This 18th day of February 2025



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE